



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Clyde Barton
County Auditor
Winkler County
Kermit, Texas

Dear Sir:

Opinion No. 0-3417

Re: From what fund could the county legally pay for a fire truck and/or equipment as provided for in H. B. No. 230, Acts 1941, 47th Leg., and related questions.

Your recent request for an opinion of this department on the questions stated herein has been received.

We quote from your letter as follows:

"The Legislature of the State has recently passed a bill known as House Bill #230, which provides for the purchase of a fire truck or trucks in various counties, set out by population brackets.

"Will you please advise from what fund the county could legally pay for such a fire truck and/or equipment and if they might issue warrants for the same?

"Does the County Judge have the authority upon presentation of a petition to call an election for the voting of bonds and levying a tax therefor to purchase said fire trucks and/or equipment?"

Article 2351a, Vernon's Annotated Civil Statutes, (Acts 1941, 47th Legislature, House Bill No. 230) provides:

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"The Commissioners Court in counties having a population of more than three hundred thousand (300,000) and less than three hundred and fifty thousand (350,000) inhabitants in accordance with the last preceding Federal Census, and in counties having a population of more than forty-eight thousand, five hundred (48,500) and less than forty-nine thousand (49,000) inhabitants, and in counties having a population of not less than twenty-two thousand and eighty-nine (22,089) nor more than twenty-two thousand, one hundred (22,100) inhabitants, and in counties having a population of more than six thousand, one hundred (6,100) and less than six thousand, one hundred and eighty (6,180) inhabitants in accordance with the last preceding Federal Census, shall have the authority to purchase fire trucks and other fire-fighting equipment by first advertising and receiving bids thereon as provided by law, to be used for the protection and preservation of bridges, county shops, county warehouses, and other property located without the limits of any incorporated city or town."

Winkler County has a population of six thousand, one hundred and forty-one (6,141) inhabitants according to the 1940 Federal Census. Therefore, Winkler County comes within the last population bracket mentioned in the above quoted statute.

Section 56 of Article 3 of the State Constitution provides in part:

"The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing:

"Regulating the affairs of counties, cities, towns, wards or school districts; * * *."

This department has heretofore construed many statutes involving certain population brackets similar to the one considered here, most of these, were statutes attempting to regulate the affairs of the various counties coming within a certain designated population bracket and were held to be special or local laws regulating the affairs of the various counties and, therefore, unconstitutional and void.

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In view of the holding of the Supreme Court in the case of Miller v. El Paso County (not yet reported), and the authorities cited therein, it is our opinion that the above mentioned statute, as it applies to Winkler County is a local or special law attempting to regulate the affairs of the county and is unconstitutional and therefore void.

Therefore, the questions presented in your inquiry become moot.

Trusting that the foregoing fully answers your inquiry, we are

APPROVED MAY 7, 1941

[Signature]
FIRST ASSISTANT
ATTORNEY GENERAL

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

[Signature]
Ardell Williams
Assistant

AW:RS

